



August 2004

In March, the Washington State Legislature passed HB 3188, which will make it easier for the Department of Labor and Industries (L&I) to prevent and prosecute fraud and abuse of the workers' compensation system by workers, employers and health-care providers. The employer portion of the new law took effect June 10.

### **What parts of the new law impact employers in the construction industry?**

Three sections of the new law change employer requirements. One section, Prime Contractor Liability, is specifically aimed at construction contractors. Two other sections – Successorship Liability and Corporate Officer Liability – apply to all industries, but will have an impact in construction. The changes were made because contractors who report hours accurately and pay the premiums they owe complained they were at an unfair disadvantage when competing for contracts against contractors who cheat the system. That concern led L&I to look at how employers typically avoid industrial insurance premiums. Often, they do that by closing or transferring the assets of a company that owes premiums to a new company. The law, which passed with the support of business and organized labor, closes that and other loopholes.

### **Explain how the three sections could impact me.**

- **Successorship Liability:** This section changes the definition of successor. Specifically, it changes what kind of property transfers will result in a new owner being held liable for past premiums owed by the previous employer. In the past, the transfer of tangible assets such as a truck or equipment could trigger this liability. The new law expands the definition of assets. Under it, transferring such things as leased equipment or a company name and phone number may trigger this liability.
- **Prime Contractor Liability:** Prime contractors have long been responsible for industrial insurance premiums not paid by the subcontractors they hire who employ workers. This section gives prime contractors a way of checking to see if a subcontractor has an account that is in good standing with L&I. They must check on a subcontractor's status annually, either by phone or at the agency's web site at <http://www.lni.wa.gov/TradesLicensing/Contractors/HireCon/CRUA/default.asp>. If a prime contractor hires a subcontractor whose account is current, and that subcontractor later doesn't pay industrial insurance premiums for the job at which he or she is being hired, the prime contractor will not be held liable for the unpaid premiums, providing the subcontractor meets the four other criteria for being a separate, established business. This provision does not free contractors from their liability for premiums when they hire someone who does not meet the test for an independent business and, therefore, turns out to be one of their employees.
- **Corporate Officer Liability:** This provision attaches personal liability to corporate officers who are responsible for having the corporation or LLC pay its insurance

premiums and fail to live up to that responsibility. Personal liability can occur when a business is dissolved or abandoned. This means that L&I can now go after the personal assets of a corporate officer who intentionally prevents payment of L&I premiums before closing a business.

**It sounds like L&I is focusing all of its efforts on employer fraud and abuse. Why employers and not workers and health-care providers who cheat the workers' compensation system?**

The key to the 2004 Legislature passing this law was that it took a balanced approach to fighting fraud and abuse. Additional staff is being hired and transferred to the newly created Fraud Prevention and Compliance Program to increase the number of validity checks on claims, investigate questionable injured-worker activities, and audit suspect employers. Changes in the law remove some significant legal hurdles that will make it easier to prosecute injured-worker fraud and abuse. Later this year, new software programs will improve L&I's ability to monitor claims and detect irregular provider billings.

**Anything else?**

Because HB 3188 affects the construction industry, one provision of the new law requires that L&I reach out to contractors and help them better understand what the new law requires of them. This correspondence is part of that outreach effort. In addition to this mailing, the three new employer sections of the law will be incorporated into the curriculum at three Contractor Training Days being held by L&I. Educational information also will be included in articles sent to trade publications and will be included in the next issue of *Employer News*, which will be published in October.

**Can L&I do this alone?**

While much of this effort involves establishing systems at L&I to better track claims, payment of premiums and billing irregularities, L&I continues to rely on the public to notify the department of fraud. Reports can be called in to L&I's Report-a-Fraud Hotline at 1-888-811-5974, or sent in via e-mail to [Fraud@LNI.wa.gov](mailto:Fraud@LNI.wa.gov).

**How can I find out if L&I is making progress in this area?**

In addition to the agency's annual fraud report, L&I is required to publish quarterly updates on the progress it is making. The first quarterly report is due out in November.

**Where can I learn more about L&I's efforts to combat fraud?**

Employers can contact their L&I Account Manager or Carl Hammersburg, manager of L&I's Fraud Prevention and Compliance Program, at 360-902-5933 or [hamc235@LNI.wa.gov](mailto:hamc235@LNI.wa.gov). The proposed rules implementing the new laws can be found at <http://www.LNI.wa.gov/LawRule/>